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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

Arizona Corporation Commission
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AZ Corporation Commission
Director Of Utilities

IN THE MATTER OF THE APPLICATION OF
BULLSEYE TELECOM, INC. FOR A
CERTIFICATE OF CONVENIENCE AND
NECESSITY TO PROVIDE RESOLD LONG
DISTANCE AND FACILITIES-BASED LOCAL
EXCHANGE SERVICES IN THE STATE OF
ARIZONA AND PETITION FOR COMPETITIVE
CLASSIFICATION OF PROPOSED SERVICES.

DOCKET NO. T-04276A-04-0667

DECISION NO. 67751

OPINION AND ORDER

DATE OF HEARING: January 31, 2005
PLACE OF HEARING: Phoenix, Arizona
ADMINISTRATIVE LAW JUDGE: Gregory Garlick¹
APPEARANCES: Mr. Scott Loney, Vice President of Marketing,
on behalf of Bullseye Telecom; and
David Ronald, Staff Attorney, Legal Division,
on behalf of the Utilities Division of the Arizona
Corporation Commission.

BY THE COMMISSION:

On September 14, 2004, Bullseye Telecom, Inc. ("Applicant" or "Bullseye") submitted to the Arizona Corporation Commission ("Commission") an application for a Certificate of Convenience and Necessity ("Certificate") to provide resold long distance and facilities-based local exchange telecommunications services within the State of Arizona. The application petitioned the Commission for determination that its proposed services should be classified as competitive.

On December 21, 2004, the Commission's Utilities Division Staff ("Staff") filed a Staff Report recommending approval of Bullseye's application subject to certain conditions.

On December 23, 2004, by Procedural Order, the hearing in this matter was scheduled for February 23, 2005.

¹ The Opinion and Order was prepared by Marc E. Stern.

On January 3, 2005, Applicant requested that this matter be rescheduled. By Procedural order, the hearing was rescheduled for January 31, 2005.

On January 31, 2005, a public hearing was held before a duly authorized Administrative Law Judge of the Commission at its offices in Phoenix, Arizona. The Company appeared through its Vice President of Marketing. Staff appeared with Counsel. At the conclusion of the hearing, the matter was taken under advisement pending submission of a Recommended Opinion and Order to the Commission.

* * * * *

Having considered the entire record herein and being fully advised in the premises, the Commission finds, concludes, and orders that:

FINDINGS OF FACT

1. On September 14, 2004, Bullseye filed with the Commission an application for a Certificate to provide facilities-based local exchange and resold long distance telecommunications services within the State of Arizona. The application petitioned the Commission for a determination that its proposed services should be classified as competitive.

2. Bullseye is incorporated under the laws of the State of Michigan and is authorized to do business in Arizona.

3. On December 21, 2004, Staff filed its Staff Report, which recommended approval of the application and included a number of additional recommendations.

4. On January 3, 2005, by Revised Procedural Order, this matter was set for hearing on January 31, 2005.

5. An Affidavit of Publication dated January 7, 2005, that complies with Commission rules, was late filed by Applicant on February 3, 2005.

6. At the hearing on January 31, 2005, Bullseye agreed to confer with Staff after the hearing and revise certain portions of its Local Exchange and Interexchange tariffs. Based on these discussions, replacement pages for Applicant's tariff were filed with the Commission on February 2, 2005 (see discussion below regarding these revised tariff provisions).

1 7. Applicant has the technical capability to provide the services that are proposed in its
2 application.

3 8. Currently there are several incumbent providers of local exchange and interexchange
4 services in the service territory requested by Applicant, and numerous other entities have been
5 authorized to provide competitive local and interexchange services in all or portions of that territory.

6 9. It is appropriate to classify all of Applicant's authorized services as competitive.

7 10. The Staff Report stated that Applicant has no market power and the reasonableness of
8 its rates would be evaluated in a market with numerous competitors.

9 11. According to Staff, Bullseye submitted unaudited financial statements for the twelve
10 month period ending December 31, 2003. These financial statements list assets in excess of \$11.1
11 million, equity in excess of \$2.8 million, and a net income in excess of \$1.5 million.

12 12. Staff recommends that Bullseye's application for a Certificate to provide competitive
13 facilities-based local exchange and resold long distance telecommunications services be granted
14 subject to the following conditions:

- 15
- 16 (a) that, unless Bullseye provides services solely through the use of its own
17 facilities, the Applicant procure an interconnection agreement before being
18 allowed to offer local exchange service. The interconnection agreement should
19 be procured within 365 days of the effective date of the Order in this matter or
20 30 days prior to the provision of service, whichever comes first, and must
21 remain in effect until further Order of the Commission. If the Applicant
22 provides services solely through the use of its own facilities, no other
23 information shall be required once the Applicant informs the Commission of
24 that fact by filing a letter with the Commission's Docket Control Center under
25 the same timeframe and provision of service criteria as above;
- 26 (b) that Bullseye be ordered to file with the Commission, within 365 days of the
27 effective date of the Order in this matter or 30 days prior to the provision of
28 service, whichever comes first, its plan to have its customers' telephone
numbers included in the incumbent's Directories and Directory Assistance
databases;
- (c) that Bullseye be ordered to pursue permanent number portability arrangements
with other LECs pursuant to Commission rules, federal laws and federal rules;
- (d) that Bullseye be ordered to abide by and participate in the AUSF mechanism
instituted in Decision No. 59623, dated April 24, 1996 (Docket No. RT-
00000E-95-0498);
- (e) that Bullseye be ordered to abide by the quality of service standards that were
approved by the Commission for Qwest in Docket No. T-0151B-93-0183;

- (f) that in areas where it is the sole provider of local exchange service facilities, Bullseye be ordered to provide customers with access to alternative providers of service pursuant to the provisions of Commission rules, federal laws and federal rules;
- (g) that Bullseye be ordered to certify, through the 911 service provider in the area in which it intends to provide service, that all issues associated with the provision of 911 service have been resolved with the emergency service providers before it begins to provide local exchange service. This certification should be filed with the Commission within 365 days of an Order in this matter or 30 days prior to the provision of service, whichever comes first, which certification must remain in effect until further Order of the Commission;
- (h) that Bullseye be ordered to abide by all the Commission decisions and policies regarding CLASS services;
- (i) that Bullseye be ordered to provide 2-PIC equal access;
- (j) that Bullseye be required to notify the Commission immediately upon changes to its name, address or telephone number;
- (k) that Bullseye be ordered to comply with all Commission rules, orders, and other requirements relevant to the provision of intrastate telecommunications service;
- (l) that Bullseye be ordered to maintain its accounts and records as required by the Commission;
- (m) that Bullseye be ordered to file with the Commission all financial and other reports that the Commission may require, and in a form and at such times as the Commission may designate;
- (n) that Bullseye be ordered to maintain on file with the Commission all current tariffs and rates, and any service standards that the Commission may require;
- (o) that Bullseye be ordered to cooperate with Commission investigations including, but not limited to, customer complaints; and
- (p) that Bullseye be subject to the Commission's rules and the 1996 Telecommunications Act to the extent that they apply to CLECs and interexchange carriers.

13. Staff further recommended that Bullseye's Certificate be conditioned upon Bullseye filing conforming tariffs in accordance with this Decision within 365 days from the date of an Order in this matter, or 30 days prior to providing service, whichever occurs first.

14. Based on Bullseye's tariffs which indicates that it will collect from its customers an advance, deposit and/or prepayment, Staff also is recommending the following:

- (1) Bullseye procure a performance bond equal to \$110,000. The minimum bond amount of \$110,000 should be increased in increments of \$55,000 whenever the total amount of the advances, deposits and prepayments is within \$11,000 of the bond amount;
- (2) Bullseye docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission;
- (3) if Bullseye desires to discontinue service, it should be required to file an application with the Commission pursuant to A.A.C. R14-2-1107²; and
- (4) Bullseye should be required to notify each of its local exchange customers and the Commission 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107; and any failure to do so should result in forfeiture of the Applicant's performance bond.

15. Staff further recommended that if any of the above timeframes are not met, that Bullseye's Certificate should become null and void without further Order of the Commission and no time extensions for compliance should be granted.

16. At the hearing, Bullseye agreed to provide its services in accordance with Staff's recommendations.

17. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that Bullseye's fair value rate base ("FVRB") is zero and is not useful in a fair value analysis, and is not useful in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation. Staff has reviewed the rates to be charged by the Applicant and believes they are just and reasonable as they are comparable to other competitive local carriers, local incumbent carriers and several long distance carriers operating in Arizona and comparable to the rates the Applicant charges in other jurisdictions. Therefore, while Staff considered the FVRB information submitted by the Applicant, the FVRB information provided should not be given substantial weight in this analysis.

18. The rates to be ultimately charged by Bullseye will be heavily influenced by the market. Because of the nature of the competitive market and other factors, a fair value analysis is not necessarily representative of the company's operations.

² Pursuant to A.A.C. R14-2-1107, the Applicant is required to comply and obtain Commission authorization of compliance with all of the requirements, including but not limited to the notice requirements, prior to discontinuance of service and/or abandonment of its service area.

1 19. Staff believes that Bullseye has no market power and that the reasonableness of its
2 rates will be evaluated in a market with numerous competitors. In light of the competitive market in
3 which the Applicant will be providing its services, Staff believes that the rates in Applicant's
4 proposed tariffs for its competitive services will be just and reasonable, and recommends that the
5 Commission approve them.

6 20. Staff's recommendations, as set forth herein, are reasonable. However, the amended
7 tariff filing submitted by the Applicant on February 2, 2005 should be further revised to eliminate
8 Section 2.1.3.C regarding "Continuation of Service." As proposed, that section states as follows:

9 Continuation of Service – Except as other wise stated in the tariff, at the
10 expiration of the initial term specified in each Service Order, or in any
11 extension thereof, service shall be renewed automatically for a one (1)
12 year term, unless the Customer provides notice of intent not to renew such
13 agreement at least thirty (30) days prior to the end of the initial or any
14 additional term. Any termination shall not relieve the Customer of its
15 obligation to pay any charges incurred under the service order and this
16 tariff prior to termination. The rights and obligations that by their nature
17 extend beyond the termination of the term of the service order shall
18 survive such termination. Customers may cancel service, without
19 termination penalty, during the first forty-five (45) days of each new term.

20 21. We do not believe it is reasonable to require that a customer who fails to cancel
21 service at least 30 days prior to the end of a service contract should be deemed to have automatically
22 renewed service for an additional one-year term. Such provisions have the potential to hinder
23 customer choice and competition, which is inconsistent with our rules and stated policies encouraging
24 competition in the telecommunications industry. See, e.g., *Winstar Wireless*, Decision No. 64740
25 (April 17, 2002), at 8. Bullseye should therefore revise its compliance tariff to exclude this
26 provision. We also direct Staff to carefully review the proposed tariffs filed by applicants seeking to
27 provide telecommunications services, especially for facilities-based applicants, to ensure that such
28 companies are not attempting to insert one-sided or onerous tariff provisions that place customers at a
disadvantage relative to the telecommunications provider that drafted the tariff.

 22. Bullseye's fair value rate base is determined to be zero for purposes of this
proceeding.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

6. Applicant is a fit and proper entity to receive a Certificate authorizing it to provide competitive facilities-based local exchange and resold long distance telecommunications services in Arizona as conditioned by Staff's recommendations.

7. The telecommunications services that the Applicant intends to provide are competitive within Arizona.

8. Pursuant to Article XV of the Arizona Constitution as well as the Competitive Rules, it is just and reasonable and in the public interest for Applicant to establish rates and charges that are not less than the Applicant's total service long-run incremental costs of providing the competitive services approved herein.

9. Staff's recommendations, as set forth herein, are reasonable and should be adopted.

10. Bullseye's competitive rates, as set forth in its proposed tariffs and as modified herein, are just and reasonable and should be approved.

ORDER

IT IS THEREFORE ORDERED that the application of Bullseye Telecom, Inc. for a Certificate of Convenience and Necessity for authority to provide competitive facilities-based local exchange and resold long distance telecommunications services in Arizona shall be, and is hereby,

1 granted, conditioned upon Bullseye Telecom, Inc.'s timely compliance with the following three
2 Ordering Paragraphs.

3 IT IS FURTHER ORDERED that Bullseye Telecom, Inc. shall file conforming tariffs in
4 accordance with this Decision within 365 days of this Decision or 30 days prior to providing service,
5 whichever comes first.

6 IT IS FURTHER ORDERED that Bullseye Telecom, Inc. shall procure a performance bond
7 equal to \$110,000 the earlier of 365 days from the effective date of this Order or 30 days prior to the
8 commencement of service.

9 IT IS FURTHER ORDERED that Bullseye Telecom, Inc. shall comply with all of the Staff
10 recommendations set forth in the above-stated Findings of Fact and Conclusions of Law.

11 IT IS FURTHER ORDERED that if Bullseye Telecom, Inc. Operating Company, Inc. fails to
12 meet the timeframes outlined in the Ordering Paragraphs above, that the Certificate of Convenience
13 and Necessity conditionally granted herein shall become null and void without further Order of the
14 Commission.

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IT IS FURTHER ORDERED that if Bullseye Telecom, Inc. fails to notify each of its customers and the Commission at least 60 days prior to filing an application to discontinue service pursuant to A.A.C. R14-2-1107, that in addition to voidance of its Certificate of Convenience and Necessity, Bullseye Telecom, Inc.'s performance bond shall be forfeited.

IT IS FURTHER ORDERED that this Decision shall become effective immediately.

BY ORDER OF THE ARIZONA CORPORATION COMMISSION.

 CHAIRMAN
 COMMISSIONER
 COMMISSIONER

 COMMISSIONER
 COMMISSIONER

IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive Secretary of the Arizona Corporation Commission, have hereunto set my hand and caused the official seal of the Commission to be affixed at the Capitol, in the City of Phoenix, this 11th day of April, 2005.


 BRIAN C. McNEIL
 EXECUTIVE SECRETARY

DISSENT _____

DISSENT _____

MES:mj

1 SERVICE LIST FOR: BULLSEYE TELECOM, INC.

2 DOCKET NO.: T-04276A-04-0667

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